

ENTERED

MAY 2 2006

K.R.W.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

IN RE:

Tracy Pelzer,

Debtor

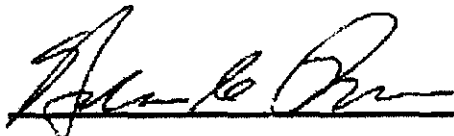
C/A No. 06-01366

Chapter 13

JUDGMENT

FILED
MAY 2 2006
United States Bankruptcy Court
Columbia, South Carolina (2)

Based upon the findings of fact and conclusion of law made in the attached Order, the Motion to Extend Stay filed by Tracy Pelzer is granted. The automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B). As a condition of extending the automatic stay, it is further ordered that, should the Trustee request it, the debtor will be subject to a wage deduction order to assist the debtor in complying with the plan. As a further condition of extending the stay, should this case be dismissed for any reason, said dismissal shall be with prejudice as to any subsequent filing by the debtor under Chapters 11, 12, and 13 of the Bankruptcy Code for a period of one (1) year.



UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
May 2, 2006

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IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Tracy Pelzer

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) C/A No. 06-01366

) Chapter 13

) ORDER

FILED
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MAY 2 2006
United States Bankruptcy Court
Columbia, South Carolina (29)

This matter comes before the Court upon a Motion to Extend Stay ("Motion") filed by Tracy Pelzer ("debtor") pursuant to 11 U.S.C. § 362(c)(3)(B).¹ The debtor served the Motion and a Notice of Hearing on all creditors and a hearing on the Motion was completed within the thirty (30) day period following the petition date. The Chapter 13 trustee filed a response.

The debtor in this case was also a debtor in a prior Chapter 13 bankruptcy case that was pending within a one (1) year period preceding the filing of this current case. Therefore, pursuant to § 362(c)(3)(A), the automatic stay provided by § 362(a) is scheduled to terminate on the thirtieth day (30th) day after the debtor filed this current bankruptcy case. Pursuant to § 362(c)(3)(C)(i)(II)(cc), there is a presumption that the debtor did not file this case in good faith because the debtor's previous case was dismissed for failure to make timely plan payments pursuant to a confirmed plan. In light of the presumption the debtor must demonstrate, by clear and convincing evidence, that she filed this case in good faith in order to extend the stay.

The debtor testified as to her changed circumstances since the dismissal of her first case. According to her testimony and schedules filed in her first case, at that time the debtor operated an in-home day care business for two to three children. The debtor testified in that case that when the children in her day care started school, she was unable to find others to take their places. She testified that she

¹ Internal references to the Bankruptcy Code (11 U.S.C. § 101 et. seq.), as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, shall be made by section number only.

searched for new employment but was unable to establish a stable income in time to save her first case, which was dismissed on October 26, 2005 for non-payment. The debtor testified that her financial circumstances have changed in that her income now is more stable. As of November, 2005 she began a new part time job as a waitress. She also works for a tax preparation service during tax season. Finally, her mother has moved in with her and is contributing \$300 per month toward expenses. The debtor testified that she could make her plan payments without her mother's assistance, but that this help would certainly assist her with the completion of her plan.

At the hearing on April 25 the debtor advised the court that an amended schedule I was necessary to render her schedules correct after the court pointed out that in the debtor's last case she received \$600 per month in child support, but only \$200 per month is scheduled in this case. The debtor reported that this was an error and that the amount should have been \$600. At the time of the hearing the debtor scheduled net income of \$1674.56 and expenses of \$1300, leaving \$374.56 available to fund a plan. She amended her schedule I pursuant to the court's request on April 25, 2006 immediately after the hearing, adding the \$400 in omitted income to correspond to her testimony. On the same date the debtor also increased her expenses on schedule J to \$1700. This \$400 increase in expenses was explained as follows: "Amended to correct expenses for electricity, food, medical and clothing to better reflect debtors actual expenses." However, at the hearing on this matter and shortly before amending this schedule of expenses the debtor testified that this schedule was correct and her attorney offered the content of schedule J as part of his evidence of changed circumstances. Although this change in sworn statements brings into question the debtor's credibility, the court notes that the budget most recently filed does appear to offer a more realistic schedule of her expenses as needed to render the case successful.² The court neither approves nor disapproves her \$400 change in expenses and cautions this or any debtor that if he or she increases expenses to his or her benefit after a corresponding increase in income that debtor and counsel should be

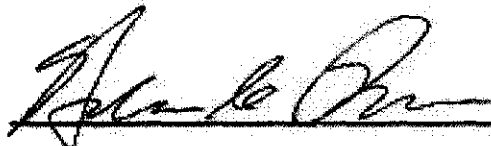
²The debtor appears from her schedules to be far below the applicable median family income.

prepared upon request to explain any inconsistent sworn statements to the chapter 13 trustee or court during the confirmation process.

Despite the inconsistency, the debtor has demonstrated changed circumstances since her last case with the addition of employment and has shown her ability to fund a plan given that her excess income per schedules I and J available to pay her proposed \$375 plan payment is between \$374.56 and \$774.56, depending on which schedule of expenses is used. Based on the evidence presented the court finds that the debtor has demonstrated a substantial change in circumstances and has shown by clear and convincing evidence that this case was filed in good faith. The debtor has stable regular employment and the debtor appears to have the intent and ability to complete the proposed plan and possibly even a plan with a higher monthly payment given the recent addition of income to schedule I.

It is therefore ordered that the automatic stay is extended as to all creditors pursuant to § 362(c)(3)(B). As a condition of extending the automatic stay, it is further ordered that, should the Trustee request it, the debtor will be subject to a wage deduction order to assist the debtor in complying with the plan. As a further condition of extending the stay, should this case be dismissed for any reason, said dismissal shall be with prejudice as to any subsequent filing by the debtor under Chapters 11, 12, and 13 of the Bankruptcy Code for a period of one (1) year.

AND IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "John L. Brown", is written over a horizontal line.

UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
May 2, 2006